

## Article 16.

### Foreign or Alien Insurance Companies.

#### **§ 58-16-1. Admitted to do business.**

Foreign or alien insurance companies, upon complying with the conditions of Articles 1 through 64 of this Chapter applicable to them, may be admitted to transact in this State any class of insurance authorized by the laws in force relative to the duties, obligations, prohibitions, and penalties of insurance companies, and subject to all laws applicable to the transaction of such business by foreign or alien insurance companies and their agents. (1899, c. 54, s. 61; Rev., s. 4746; C.S., s. 6410; 1945, c. 384; 1987, c. 629, s. 17.)

#### **§ 58-16-5. Conditions of licensure.**

A foreign or alien insurance company may be licensed to do business when it:

- (1) Deposits with the Commissioner a certified copy of its charter or certificate of organization and a statement of its financial condition and business, in the form and detail that the Commissioner requires, signed and sworn to by its president and secretary or other proper officer, and pays for the filing of this statement the sum required by law.
- (2) Satisfies the Commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact as direct insurance or assumed reinsurance; that it has, if a stock company, a free surplus and a fully paid-up and unimpaired capital, exclusive of stockholders' obligations of any description of an amount not less than that required for the organization of a domestic company writing the same kinds of business; and if a mutual company that its free surplus is not less than that required for the organization of a domestic company writing the same kind of business, and that the capital, surplus, and other funds are invested substantially in accordance with the requirements of this Chapter.
- (3) Repealed by Session Laws 1995, c. 517, s. 6.
- (4) Repealed by Session Laws 1987, c. 629, s. 20.
- (5) Files with the Commissioner a certificate that it has complied with the laws of the state or government under which it was organized and is authorized to make contracts of insurance.
- (6) Satisfies the Commissioner that it is in substantial compliance with G.S. 58-7-21, 58-7-26, 58-7-30, and 58-7-31 and Article 13 of this Chapter.
- (7) Satisfies the Commissioner that it is in compliance with the company name requirements of G.S. 58-7-35.
- (8) Satisfies the Commissioner that the operation of the company in this State would not be hazardous to prospective policyholders, creditors, or the general public.
- (9) Satisfies the Commissioner that it is in substantial compliance with the requirements of G.S. 58-7-37 pertaining to the background of its officers and directors.
- (10) Files with the Commissioner an instrument appointing the Commissioner as the company's agent on whom any legal process under G.S. 58-16-30 may be served. This appointment is irrevocable as long as any liability of the company

remains outstanding in this State. A copy of this instrument, certified by the Commissioner, is sufficient evidence of this appointment; and service upon the Commissioner is sufficient service upon the company. (1899, c. 54, s. 62; 1901, c. 391, s. 5; 1903, c. 438, s. 6; Rev., s. 4747; C.S., s. 6411; 1945, c. 384; 1951, c. 781, s. 3; 1985 (Reg. Sess., 1986), c. 1027, s. 32; 1987, c. 629, s. 20; 1987 (Reg. Sess., 1988), c. 975, s. 16; 1991, c. 681, s. 24; 1995, c. 193, s. 25; c. 517, s. 6; 1999-294, s. 7; 2001-223, s. 14.1; 2009-172, s. 8.)

**§ 58-16-6. Conditions of continued licensure.**

In order for a foreign insurance company to continue to be licensed, it shall report any changes in the documents filed under G.S. 58-16-5(1) or G.S. 58-16-5(5); maintain the amounts of capital and surplus specified in G.S. 58-16-5(2); and remain in compliance with G.S. 58-16-5(6), (7), and (8) and with G.S. 58-7-46. (1995, c. 517, s. 7; 2001-223, s. 14.2; 2005-215, s. 13.)

**§ 58-16-10. Limitation as to kinds of insurance.**

Any foreign or alien company admitted to do business in this State shall be limited with respect to doing kinds of insurance in this State in the same manner and to the same extent as are domestic companies, provided that any foreign insurance company which has been licensed to do the business of life insurance in this State continuously during a period of 20 years next preceding March 6, 1945, may continue to be licensed, in the discretion of the Commissioner, to do the kind or kinds of insurance business which it was authorized to do immediately prior to March 6, 1945. (1899, c. 44, s. 65; 1901, c. 391, s. 5; 1903, c. 438, s. 6; Rev., s. 4748; 1911, c. 111, s. 2; C.S., s. 6412; 1945, c. 384; 1985 (Reg. Sess., 1986), c. 1027, s. 53; 1987 (Reg. Sess., 1988), c. 975, s. 17.)

**§ 58-16-15. Foreign companies; requirements for admission.**

A company organized under the laws of any other of these United States for the transaction of life insurance may be admitted to do business in this State if it complies with the other provisions of Articles 1 through 64 of this Chapter regulating the terms and conditions upon which foreign life insurance companies may be admitted and authorized to do business in this State, and, in the opinion of the Commissioner, is in sound financial condition and has policies in force upon not less than 500 lives for an aggregate amount of not less than five hundred thousand dollars (\$500,000). Any life company organized under the laws of any other country than the United States, in addition to the above requirements, must make and maintain the deposit required of such companies by Article 5 of this Chapter. (1899, c. 54, s. 56; Rev., s. 4774; C.S., s. 6456; 1945, c. 379; 1991, c. 720, ss. 4, 16.)

**§ 58-16-20. Company owned or controlled by foreign government prohibited from doing business.**

(a) Any insurance company or other insurance entity that is owned or controlled by any foreign government outside the continental limits of the United States or the territories of the United States is prohibited from doing any kind of insurance business in the State of North Carolina. For the purposes of this section, "foreign government" means any foreign government or any state, province, municipality, or political subdivision of any foreign government, and shall

not be construed to apply to any insurance company organized under the laws of a foreign nation that is owned or controlled by the private citizens or private business interest of that foreign nation.

(b) The Commissioner shall not license any insurance company or other insurance entity that is owned or controlled by any foreign government outside the continental limits of the United States or the territories of the United States, nor shall the Commissioner authorize any such company or entity to transact any kind of insurance business in the State of North Carolina.

(c) Any insurance company or other insurance entity that is owned or controlled by any foreign government outside the continental limits of the United States or the territories of the United States, or any representative or agent of any such company or entity that violates the provisions of this section, is guilty of a Class 3 misdemeanor.

(d) This section does not apply to the operating subsidiary of any insurance company or other insurance entity, where the company or entity is owned or controlled by any foreign government outside the continental limits of the United States or the territories of the United States, as long as the operating subsidiary is domesticated in and licensed by another state of the United States as an insurer or reinsurer and as a separate subsidiary. (1955, c. 449; 1991, c. 720, s. 4; 1993, c. 539, s. 449; 1994, Ex. Sess., c. 24, s. 14(c); 1997-179, s. 1.)

#### **§ 58-16-25. Retaliatory laws.**

When, by the laws of any other state or nation, any fines, penalties, licenses, fees, deposits of money or of securities, or other obligations or prohibitions are imposed upon insurance companies of this State doing business in such other state or nation or upon their agents therein greater than those imposed by this State upon insurance companies of such other state, then, so long as such laws continue in force, the same fines, penalties, licenses, fees, deposits, obligations and prohibitions, of whatever kind, may in the discretion of the Commissioner be imposed upon all such insurance companies of such other state or nation doing business within this State and upon their agents here. Nothing herein repeals or reduces the license, fees, taxes, and other obligations now imposed by the laws of this State or to go into effect with the companies of any other state or nation unless some company of this State is actually doing or seeking to do business in such state or nation. When an insurance company organized under the laws of any state or country is prohibited by the laws of such state or country or by its charter from investing its assets other than capital stock in the bonds of this State, then and in such case the Commissioner is authorized and directed to refuse to grant a license to transact business in this State to such insurance company. (1899, c. 54, s. 71; 1903, c. 536, s. 11; Rev., s. 4749; C.S., s. 6413; 1927, c. 32; 1945, c. 384; 1987, c. 814, s. 3; 1991, c. 720, s. 4.)

#### **§ 58-16-30. Service of legal process upon Commissioner.**

As an alternative to service of legal process under G.S. 1A-1, Rule 4, the service of such process upon any insurance company or any foreign or alien entity licensed or admitted and authorized to do business in this State under the provisions of this Chapter may be made by the sheriff or any other person delivering and leaving a copy of the process in the office of the Commissioner with a deputy or any other person duly appointed by the Commissioner for that purpose; or acceptance of service of the process may be made by the Commissioner or a duly appointed deputy or person. Service may also be made by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Commissioner. As a condition precedent to a valid service of process under this section, the party

obtaining such service shall pay to the Commissioner at the time of service or acceptance of service the sum of ten dollars (\$10.00), which the party shall recover as part of the taxable costs if the party prevails in the action. (1899, c. 54, ss. 16, 62; 1903, c. 438, s. 6; Rev., s. 4750; C.S., s. 6414; 1927, c. 167, s. 1; 1931, c. 287; 1951, c. 781, s. 9; 1971, c. 421, s. 1; 1985, c. 666, s. 5; 1989, c. 645, s. 2; 1991, c. 720, s. 4; 1995, c. 517, s. 8.)

**§ 58-16-35. Unauthorized Insurers Process Act.**

(a) Purpose of Section. – The purpose of this section is to subject certain insurers to the jurisdiction of courts of this State in suits by or on behalf of insureds or beneficiaries under insurance contracts. The General Assembly declares that it is a subject of concern that many residents of this State hold policies of insurance issued by insurers not authorized to do business in this State, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such State interest, the General Assembly herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this statute, what constitutes doing business in this State, and also exercises powers and privileges available to the State by virtue of Public Law 15, 79th Congress of the United States, Chapter 20, 1st Session, s. 340, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

(b) Service of Process upon Unauthorized Insurer. –

- (1) Any of the following acts in this State, effected by mail or otherwise, by an unauthorized foreign or alien insurer:
  - a. The issuance or delivery of contracts of insurance to residents of this State or to corporations authorized to do business therein,
  - b. The solicitation of applications for such contracts,
  - c. The collection of premiums, membership fees, assessments or other considerations for such contracts, or
  - d. Any other transaction of business,is equivalent to and shall constitute an appointment by such insurer of the Commissioner and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this State upon such insurer.
- (2) Such service of process shall be made by delivering to and leaving with the Commissioner or some person in apparent charge of his office two copies thereof and the payment to him of ten dollars (\$10.00). The Commissioner shall within four business days mail by certified or registered mail one of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by certified or registered mail by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the transmitting post office, showing the name of the sender of the letter and the name and address of the

person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

- (3) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subdivision (2) of this subsection be valid if:
  - a. It is served on a person within this State who is in the State on behalf of the insurer to solicit insurance, make, issue, or deliver a contract of insurance, or collect or receive a premium, membership fee, assessment, or other consideration for insurance;
  - b. A copy of the process is sent within 10 days after service by certified or registered mail by the plaintiff or plaintiff's attorney to the defendant at the defendant's last known principal place of business; and
  - c. The defendant's receipt, or the receipt issued by the transmitting post office, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.
- (4) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.
- (5) Nothing in this section contained shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.
- (c) Defense of Action by Unauthorized Insurer. –
  - (1) Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall either
    - a. Deposit with the clerk of the court in which such action, suit or proceeding is pending cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action; or
    - b. Procure a license to transact the business of insurance in this State.
  - (2) The court in any action, suit, or proceeding, in which service is made in the manner provided in subdivisions (2) or (3) of subsection (b) may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subdivision (1) of this subsection and to defend such action.
  - (3) Nothing in subdivision (1) of this subsection is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subdivisions (2) or (3) of subsection (b) on the ground either

- a. That such unauthorized insurer has not done any of the acts enumerated in subdivision (1) of subsection (b), or
- b. That the person on whom service was made pursuant to subdivision (3) of subsection (b) was not doing any of the acts therein enumerated.

(d) **Attorney Fees.** – In any action against an unauthorized foreign or alien insurer upon a contract of insurance issued or delivered in this State to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action; providing, however, that the fee or portion of fee included in the judgment shall be not less than twenty-five dollars (\$25.00) nor more than twelve and one-half percent (12 1/2%) of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

(e) **Short Title.** – This section may be cited as the Unauthorized Insurers Process Act. (1955, c. 1040; 1985, c. 666, ss. 5, 8; 1987, c. 752, s. 11; 1989, c. 645, s. 3; 1991, c. 720, s. 4; 1999-132, s. 9.1.)

#### **§ 58-16-40. Alternative service of process on insurers.**

In addition to the procedures set out in Articles 1 through 64 of this Chapter, insurers may be served with process and subjected to the jurisdiction of the courts of this State pursuant to applicable provisions of Chapter 1 and Chapter 1A of the General Statutes. (1967, c. 954, s. 3.)

#### **§ 58-16-45. Commissioner to notify company of service or acceptance of service of process.**

When service of legal process is made in the manner provided in G.S. 58-16-30, the Commissioner or his duly appointed deputy shall within four business days thereafter notify the company served of such service or acceptance of service by registered or certified mail directed to its secretary, or its resident manager in the case of a foreign company having no secretary in the United States. Such notification shall be accompanied by a copy of the process served or accepted and any pleading or order accompanying the process. The Commissioner shall keep a record which shall show the day and hour of such service or acceptance of service of process and whether any pleading or order accompanied the process. When service is made under the provisions of G.S. 58-16-30, the time within which to file a responsive pleading, as provided by Chapter 1A of the General Statutes, shall be deemed extended by 12 days. (1899, c. 54, s. 16; Rev., s. 4751; C.S., s. 6415; 1927, c. 167, s. 2; 1971, c. 421, s. 2; 1985, c. 666, s. 7; 1987, c. 752, s. 11; 1991, c. 720, s. 4.)

#### **§ 58-16-50. Action to enforce compliance with this Chapter.**

Compliance with the provisions of Articles 1 through 64 of this Chapter as to deposits, obligations, and prohibitions, and the payment of taxes, fines, fees, and penalties by foreign or alien insurance companies, may be enforced in the ordinary course of legal procedure by action brought in the Superior Court of Wake County by the Attorney General in the name of the State upon the relation of the Commissioner of Insurance. (1899, c. 54, s. 102; 1903, c. 438, s. 10; Rev., s. 4752; C.S., s. 6416; 1945, c. 384.)

**§ 58-16-55. Amendments to documents.**

Any change in or amendment to any document required to be filed under G.S. 58-16-5 shall be promptly filed with the Commissioner. (1989, c. 485, s. 49.)